

Appendix A to Part 272—State Requirements

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South Dakota

The regulatory provisions include:
Administrative Rules of South Dakota, Article 74:28, Hazardous Waste, effective August 29, 2004, sections 74:28:21:01, 74:28:21:02, 74:28:21:03, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01 through 74:28:25:05, 74:28:26:01, 74:28:27:01, 74:28:28:01 through 74:28:28:05, 74:28:29:01, 74:28:30:01 and 74:28:33:01; Article 74:36, Air Pollution Control Program, as of August 29, 2004, section 74:36:11:01.

Copies of the South Dakota regulations that are incorporated by reference are available from South Dakota Legislative Research Council, 3rd Floor, State Capitol, 500 East Capitol Avenue, Pierre, SD 57501 (Phone: 605-773-3251).

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[FR Doc. 05-19255 Filed 9-26-05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Mr. Albert Donnay requesting NHTSA to require manufacturers to offer carbon monoxide detectors in all new gasoline powered vehicles and to make available retrofit devices for older vehicles. These detectors would automatically shut off the engine when carbon monoxide levels inside the vehicle exceed a concentration of 200 parts per million, when the vehicle is stationary. The data show that a mandate for in-vehicle carbon monoxide detectors would fail to address more than 70% of vehicle-related carbon monoxide deaths, because the victims are outside the vehicle. NHTSA will use its resources to consider safety areas where more effective solutions are available.

FOR FURTHER INFORMATION CONTACT: Mr. John Lee, Office of Crash Avoidance Standards, NVS-123, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366-2720. Fax: (202) 366-7002.

For legal issues: Mr. George Feygin, Office of Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

SUPPLEMENTARY INFORMATION: On January 12, 2001, Mr. Albert Donnay submitted a petition for rulemaking requesting that NHTSA: (1) Issue annual press releases on the dangers of vehicle carbon monoxide¹ (CO) poisoning and recommend the use of CO detectors, (2) report CO vehicle-related fatalities (suicide, unintentional, in moving and stationary vehicles), (3) fund research on CO poisoning in vehicles, (4) require information on the dangers of carbon monoxide poisoning be included in owners' manuals and (5) require manufacturers to install CO detectors in all new gasoline powered vehicles and offer equivalent devices for older vehicles. These detectors would have the capability to cut-off the engine when carbon monoxide levels inside the vehicle exceed a concentration of 200 parts per million (ppm) for a stationary vehicle. In moving vehicles the occupants would be directed to open a window immediately when an audio and visual warning is given off by the detector when CO level reached 10 ppm. In support of his petition, Mr. Donnay cited two NHTSA Research Notes, "Fatalities Associated With Carbon Monoxide Poisoning From Motor Vehicles in 1993" December 1996,² and "Fatalities Associated With Carbon Monoxide Poisoning From Motor Vehicles, 1995-1997" April 2000.³

The agency is denying the petition for the reasons explained below. We began our consideration of the petition by reviewing the data. In May 2004, the

¹ Carbon monoxide is a colorless, odorless gas that is contained in the exhaust of gasoline powered motor vehicles. When inhaled in sufficient quantities, carbon monoxide can cause illness or death.

² The December 1996 Research Note reported data collected by the National Center for Health Statistics (NCHS) on the estimated number of people killed as a result of CO poisoning by exhaust gases from motor vehicles in 1993. The study examined factors such as stationary and moving vehicles, unintentional and suicidal CO deaths, season of the year, and vehicle location. NCHS reported that in 1993, 1,978 deaths occurred while the vehicle was in the stationary position. Eighty-four percent of the deaths were the result of suicide, 12 percent were accidental and 3 percent were of unknown intent. The annual average of accidental fatalities in stationary vehicles for 1993 was 245.

³ The April 2000 Research Note reported an annual average of 222 accidental fatalities associated with CO poisoning for stationary vehicles for a period between 1995 and 1997. The data from the April 2000 Research Note indicated a decline in accidental fatalities in stationary vehicles from 234 CO fatalities in 1995 to 208 CO fatalities in 1997.

agency published a more comprehensive study of injuries and fatalities resulting from, among other things, CO poisoning.⁴ This study was based on a review of 1998 death certificates from 35 states. The results of the study found that CO deaths most often do not involve moving vehicles, but rather vehicles left running in enclosed spaces. There were 140 deaths associated with vehicle generated carbon monoxide poisoning found in the death certificates reviewed. Of the 140 deaths, 41 deaths (29%) occurred while the individual was sitting in the vehicle. The other 71% of deaths involved people outside the vehicle. One hundred twenty-nine of the fatalities (92%) occurred in a garage, home, or residence. Most of the scenarios involved someone working on a vehicle with the vehicle running in a closed garage, or a death in a residence when someone left a vehicle running in a garage attached to the home. A review of scientific literature cited in the report found, "Unintentional poisonings from vehicle-generated carbon monoxide diminished toward the close of the 20th century, with a particular decline in these types of incidents noted in the years following 1975 when catalytic converters were introduced into automobiles. The steady decline from 4.0 to 0.9 deaths per 1 million person-years since 1975 represents a 76.3 percent decrease. The total number of 1998 unintentional motor vehicle related deaths from carbon monoxide has been reported at 238." Thus, there is a decline in vehicle-related CO deaths absent any regulation. In addition, the data about vehicle-related CO deaths indicate a home CO detector would be substantially more effective than a vehicle CO detector at preventing these deaths because 92% of the fatalities occurred at the home.

Further, we note that NHTSA has previously denied a petition for rulemaking that is substantially similar to Mr. Donnay's petition,⁵ because the costs far exceeded the expected benefits. Specifically, the agency denied a petition for rulemaking submitted by Mr. Herb Denenberg, which requested that: (1) The agency require carbon monoxide detectors in all new motor vehicles; (2) the agency require manufacturers to offer optional carbon monoxide detectors in all new motor vehicles; (3) the agency require that the owners' manuals indicate the

⁴ "Non-Traffic Death and Injury Data Collection Study," see <http://www.nhtsa.dot.gov/cars/problems/studies/NonTraffic-NonCrash/Images/noncrash.pdf>.

⁵ See 62 FR 49190, September 19, 1997.

availability and value of installing a carbon monoxide detector; and (4) the agency issue press releases and consumer advisories with information regarding the availability and value of CO detectors. The petitioner cited the results of the 1996 Research Note and stated, "many if not most of these deaths could be prevented by carbon monoxide detectors," but did not offer any data to support this assertion. NHTSA denied the Denenberg petition because the costs would have been unjustifiable⁶ in relation to the benefits. The effectiveness of CO detectors lessens substantially over time and most vehicle-related CO deaths involve older vehicles.

The agency is denying this petitioner's request for the same reasons. In addition to our previously stated reasons for denying the petition, the agency is also concerned that the automatic engine shut-off device proposed by the petitioner could prove to be a hazard. For example, in a tunnel with congested traffic, the concentration of CO may cause the device to shut off the engine, resulting in further traffic congestion or even possible crashes.

In accordance with 49 CFR part 552, this completes the agency's technical review of the petition for rulemaking from Mr. Albert Donnay. Based on this review, the agency has concluded its resources would be more productively directed to other areas. Therefore, Mr. Donnay's petition is denied.

Issued on: September 20, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Gentry Indigo Bush as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list

the Gentry indigo bush (*Dalea tentaculoides*) as endangered under the Endangered Species Act of 1973, as amended. After reviewing the best available scientific and commercial information, we find that listing the species is not warranted at this time. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the species. This information will help us monitor the status of the species.

DATES: The finding announced in this document was made on September 14, 2005. Although no further listing action will result from this finding, we request that you submit new information concerning the status of, or threats to, this species whenever it becomes available.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021-4951. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above address.

FOR FURTHER INFORMATION CONTACT:

Mima Falk, Plant Ecologist, Arizona Ecological Services Tucson Sub-Office, 201 North Bonita Ave., Suite 141, Tucson, AZ, 85745; 520-670-6150, ext. 225.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Species. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, *i.e.*, requiring a subsequent finding to be made within 12 months. Such 12-month findings must be published in the **Federal Register**.

On January 7, 2002, we received a petition dated January 2, 2002, requesting that we list the Gentry indigo bush (*Dalea tentaculoides*) as an endangered species, and that critical habitat be designated concurrently with the listing. In a Stipulated Settlement Agreement, signed June 14, 2004 [*Center for Biological Diversity v. Norton*, CV 03-473-TUC-FRZ (D. Az)], we agreed to submit a 90-day finding to the **Federal Register** by January 31, 2005. On January 25, 2005, we made our 90-day petition finding that the petition provided substantial information indicating that listing may be warranted. The finding and our initiation of a status review was published in the **Federal Register** on February 2, 2005 (70 FR 5401). We are required, pursuant to the court approved Stipulated Settlement Agreement, to make our 12-month finding pursuant to the Act [16 U.S.C. 1533(b)(3)(B)] by September 15, 2005.

Biology and Distribution

Gentry indigo bush is an erect perennial shrub that grows from a woody root crown and can be up to 1 meter (m) (3.2 feet (ft)) tall. It is a member of the Fabaceae (Pea) Family. The leaves are compound, 3-6 centimeters (cm) (1.2-2.4 inches (in)) long with 9-17 pairs of leaflets. The leaflets are hairless, notched at the tip, and dotted with punctuate glands (translucent pitted glands or colored dots) on the lower surface. The flowers are sessile (lacking a stalk), 6 millimeters (mm) (0.24 in) in length, and are presented in oblong clusters. The flower petals are rose-purple. Plants flower in the spring, from late March to mid-May. They may produce a second set of flowers in late summer and fall in response to monsoon precipitation.

Howard S. Gentry originally described the species in 1950. It is a distinctive member of the genus *Dalea* with no closely related species (Gentry 1950; Barneby 1977). The main distinguishing character that separates this species from other sympatric species is the presence of elongate, brown, tentacle-like glands on the calyx (the outer whorl of flowering parts), lobes, floral bracts (the reduced or modified leaf subtending a flower), and branches.

Gentry indigo bush is known historically in the United States from only three areas in southern Arizona: The western and northern slopes of the Baboquivari Mountains (Tohono O'odham Nation), the Coyote Mountains (Mendoza Canyon), and Sycamore Canyon (Coronado National Forest) in

⁶ We estimated that the total cost of the requirement would exceed \$240 million. This estimate does not include the cost of installation and maintenance.